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PART II — Section 2

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 7th December, 2005:—

BILL No. CXXIV OF 2005

A Bill to provide for the regulation of common carriers, limiting their liability and declaration of value of goods delivered to them to determine their liability for loss of, or damage to, such goods occasioned by the negligence or criminal acts of themselves, their servants or agents and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Carriage by Road Act, 2005.
2. It extends to the whole of India, except the State of Jammu and Kashmir.
3. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different States and any reference in this Act to the commencement of this Act shall, in relation to a State, be construed as a reference to the coming into force of this Act in that State.

Short title,
extent and
commencement.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "common carrier" means a person engaged in the business of collecting, storing, forwarding or distributing goods to be carried by goods carriages under a goods receipt or transporting for hire of goods from place to place by motorised transport on road, for all persons undiscriminatingly and includes a goods booking company, contractor, agent, broker and courier agency engaged in the door-to-door transportation of documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles, but does not include the Government;

(b) "consignee" means the person named as consignee in the goods forwarding note;

(c) "consignment" means goods entrusted by the consignor to the common carrier for carriage, the description or details of which are given in the goods forwarding note;

(d) "consignor" means a person, named as consignor in the goods forwarding note, by whom or on whose behalf the goods covered by such forwarding note are entrusted to the common carrier for carriage thereof;

(e) "goods" includes—

(i) containers, pallets or similar articles of transport used to consolidate goods; and

(ii) animals or livestock;

(f) "goods forwarding note" means the document executed under section 8;

(g) "goods receipt" means the receipt issued under section 9;

(h) "person" includes any association or body of persons, whether incorporated or not, a road transport booking company, contractor and an agent or a broker carrying on the business of a common carrier;

(i) "prescribed" means prescribed by rules made under this Act;

(j) "registering authority" means a State Transport Authority or a Regional Transport Authority constituted under section 68 of the Motor Vehicles Act, 1988;

(k) "registration" means the registration granted or renewed under sub-section (5) of section 4.

Persons not to engage in business of common carrier without registration.

3. (1) No person shall engage in the business of a common carrier, after the commencement of this Act, unless he has been granted a certificate of registration.

(2) Any person who is engaged, whether wholly or partly, in the business of a common carrier, immediately before the commencement of this Act, shall—

(a) apply for a registration within ninety days from the date of such commencement;

(b) cease to engage in such business on the expiry of one hundred and eighty days from the date of such commencement unless he has applied for registration and the certificate of registration has been granted by the registering authority.

(3) The registering authority shall take decision on the application for registration within ninety days from the date of receipt of the application.

4. (1) Any person, who is engaged or intends to engage in the business of a common carrier, shall apply for the grant or renewal of a certificate of registration for carrying on the business of common carrier to the registering authority.

Application for grant or renewal of registration.

(2) An application under sub-section (1) shall be made, to the registering authority having jurisdiction in the area in which the applicant resides or has his principal place of business in such form and manner and accompanied by such fees payable to the registering authority as may be prescribed.

(3) An application for grant or renewal of registration for carrying on the business of a common carrier from a branch office which is outside the jurisdiction of the registering authority referred to in sub-section (2) shall be made to such registering authority in whose jurisdiction the branch office is situated in such form and manner and accompanied by such fees as may be prescribed.

Explanation.—For the removal of doubts, it is hereby declared that where an applicant intends to have two or more branch offices or main office and branch office or offices within the jurisdiction of a single State or Union territory he shall be required to make only one application for registration of such offices.

(4) A registering authority shall, before granting or renewing a certificate of registration, satisfy itself that—

(a) where the applicant is an individual, he has not been convicted of any offence involving moral turpitude;

(b) the applicant has intimate knowledge of goods or freight business;

(c) the office of the applicant is either owned by the applicant or is taken on lease by him or it or is hired in his or its name and the premises has adequate space and facilities for warehousing of goods and to handle the loading, unloading, storage and transhipment of goods;

(d) the financial resources of the applicant are sufficient to meet the liability for any loss of, or damage to, consignment and for the efficient management of business of the common carrier;

(e) the applicant fulfils such other conditions as may be prescribed.

(5) The registering authority may, on receipt of an application under sub-section (2) or sub-section (3) and after satisfying itself that the applicant fulfils the requirements of sub-section (4), grant the certificate of registration or renew it, as the case may be, for carrying on the business of a common carrier, in such form and subject to such conditions as may be prescribed:

Provided that no application for the grant or renewal of a certificate of registration shall be refused by the registering authority unless the applicant has been given an opportunity of being heard and the reasons for such refusal are given in writing by the registering authority within sixty days from the date of receipt of such application.

(6) A certificate of registration granted or renewed under sub-section (5) shall be valid for a period of ten years from the date of such grant or renewal, as the case may be:

Provided that in the case of registration in respect of branch offices referred to in sub-section (3), the validity of such registration shall be restricted to the validity of the registration granted in respect of the main office.

(7) The holder of a certificate of registration shall—

(a) maintain a register in such form and manner as may be prescribed;

(b) not shift the main office mentioned in the certificate of registration without the prior approval in writing of the registering authority which granted the registration;

(c) submit to the registering authority under whose jurisdiction the main office is located and the Transport Research Wing of the Ministry or Department of the Central Government dealing with road transport and highways such information and return as may be prescribed within one hundred and twenty days after the thirty-first day of March every year;

(d) display at a prominent place in his or its main office or branch offices, the certificate of registration in original or certified copy thereof attested by the concerned registering authority.

Suspension or cancellation of registration.

5. (1) If the registering authority is satisfied that the holder of a certificate of registration has failed to comply with any of the provisions of sub-section (7) of section 4 or a complaint is made against such holder by any consignee or consignor, it may give a notice by registered post or through electronic media or by any other verifiable means to the holder of the registration to rectify the same within a period of thirty days and in case such holder fails to do so, it may—

(i) suspend the registration for a specified period pending an inquiry; or

(ii) revoke the registration of the main office or of a particular branch office in case there are five or more complaints in succession which are proved to be true after an inquiry:

Provided that when the registration is suspended or revoked, the holder of the registration shall surrender the certificate of registration to the registering authority.

(2) No registration shall be suspended or revoked under sub-section (1) unless the holder of the registration is given an opportunity of being heard in the inquiry and the reasons for such suspension or revocation, as the case may be, are given in writing by the registering authority.

(3) The holder of a registration may, at any time, surrender the registration to the registering authority which granted the registration, and on such surrender the registering authority shall, after obtaining declaration from the holder of the registration that no liability is outstanding against him and, he would discharge such liability if he is held liable, revoke the registration.

Appeal.

6. (1) Any person aggrieved by an order of the registering authority refusing to grant or renew a certificate of registration or suspending or revoking a registration under this Act, may, within sixty days from the date of such order, appeal to the State Transport Appellate Tribunal constituted under sub-section (2) of section 89 of the Motor Vehicles Act, 1988.

59 of 1988.

(2) An appeal under sub-section (1) shall be preferred in duplicate in the form of a memorandum setting forth the grounds of objection to the order of the registering authority and shall be accompanied by such fee as may be specified by the State Government by notification in the Official Gazette.

(3) Without prejudice to the provisions of sub-sections (1) and (2), the provisions of sub-sections (1) and (2) of section 89 of the Motor Vehicles Act, 1988, as in force immediately before the commencement of this Act, with regard to appeal, shall, as far as may, apply to every appeal as if the provisions aforesaid were enacted by this Act subject to the modification that any reference therein to the "permit" shall be construed as a reference to the "registration".

59 of 1988.

Submission of annual return.

7. The State Transport Authority in respect of each State or Union territory shall submit annually to the Ministry or Department of the Central Government dealing with road transport and highways a consolidated annual return giving the details of the goods carried by the common carriers in that State or the Union territory, as the case may be, on the basis of the returns received from the holders of the registration as specified under clause (c) of sub-section (7) of section 4.

8. (1) Every consignor shall execute a goods forwarding note, in such form and manner as may be prescribed, which shall include a declaration about the value of the consignment.

Goods
forwarding
note.

(2) The consignor shall be responsible for the correctness of the particulars furnished by him in the goods forwarding note.

(3) The consignor shall indemnify the common carrier against any damage suffered by him by reason of incorrectness or incompleteness of the particulars on the goods forwarding note.

9. (1) A common carrier shall,—

Goods receipt.

(a) in case where the goods are to be loaded by the consignor, on the completion of such loading; or

(b) in any other case, on the acceptance of the goods by him, issue a goods receipt in such form and manner as may be prescribed.

(2) The goods receipt shall be issued in triplicate and the original shall be given to the consignor.

(3) The goods receipt shall be *prima facie* evidence of the weight or measure and other particulars of the goods and the number of packages stated therein.

10. (1) The liability of the common carrier for loss of, or damage to any consignment, shall be limited to ten thousand rupees or the value of consignment declared in the goods forwarding note, whichever is less, unless the consignor or any person duly authorised in that behalf have expressly undertaken to pay higher risk rate fixed by the common carrier under section 11.

Liability of
common
carrier.

(2) The liability of the common carrier in case of any delay up to such period as may be mutually agreed upon by and between the consignor and the common carrier and specifically provided in the goods forwarding note including the consequential loss or damage to such consignment shall be limited to the amount of freight charges where such loss, damage or delay took place while the consignment was under the charge of such carrier:

Provided that beyond the period so agreed upon in the goods forwarding note, compensation shall be payable in accordance with sub-section (1) or section 11:

Provided further that the common carrier shall not be liable if such carrier proves that such loss of, or damage to, the consignment or delay in delivery thereof, had not taken place due to his fault or neglect or that of his servants or agents thereof.

11. Every common carrier may require payment for the higher risk undertaken by him in carrying a particular consignment at such rate of charge as he may fix and correspondingly, his liability would be in accordance with the terms as may be agreed upon with the consignor:

Rates of charge
to be fixed by
common carrier
for carriage of
consignment at
a higher risk
rate.

Provided that to entitle such carrier to claim payment at a rate higher than his ordinary rate of charge, he should have exhibited a printed or written notice, in the vernacular language of the State, of the higher rate of charge in the place or premises where he carries on the business of common carrier.

12. (1) Every common carrier shall be liable to the consignor for the loss or damage to any consignment in accordance with the goods forwarding note, where such loss or damage has arisen on account of any criminal act of the common carrier, or any of his servants or agents.

Conditions
limiting
exonerating
the liability of
the common
carrier.

(2) In any suit brought against the common carrier for the loss, damage or non-delivery of consignment, it shall not be necessary for the plaintiff to prove that such

loss, damage or non-delivery was owing to the negligence or criminal act of the common carrier, or any of his servants or agents.

(3) Where any consignment has been detained for examination or scrutiny by a competent authority and upon such examination or scrutiny it is found that certain prohibited goods have been entrusted to the common carrier by the consignor which have not been described in the goods forwarding note, the cost of such examination or scrutiny shall be borne by the consignor and the common carrier shall not be liable for any loss, damage or deterioration caused by such detention of the consignment for examination or scrutiny:

Provided that the onus of proving that such incorrect description of goods in the goods forwarding note was received from the consignor shall be on the common carrier.

Explanation.—For the purposes of this section, “competent authority” means any person or authority who is empowered to examine or scrutinise goods by or under any law for the time being in force to secure compliance of provisions of that law.

Provision for carriage of goods of dangerous or hazardous nature to human life.

13. (1) No goods of dangerous or hazardous nature to human life shall be carried by a common carrier except in accordance with such procedure and after complying with such safeguards as may be prescribed.

(2) The Central Government may, by rules made in this behalf, specify the goods of dangerous or hazardous nature to human life and the label or class of labels to be carried in, or displayed on, the motor vehicle or such goods in the course of transportation.

(3) Notwithstanding anything contained in any other law for the time being in force, every common carrier shall scrutinise and ensure before starting transportation of any consignment containing goods of dangerous or hazardous nature to human life that the consignment is covered by, one or more insurance policies under a contract of insurance in respect of such goods providing relief in case of death or injury to a person or damage to any property or the consignment, if an accident takes place.

Power of Central Government to prohibit carriage of certain class of goods.

14. The Central Government may, by notification in the Official Gazette, specify, in public interest, the goods or class or classes of goods which shall not be carried by a common carrier.

Right of common carrier in case of consignee's default.

15. (1) If the consignee fails to take delivery of any consignment of goods within a period of thirty days from the date of notice given by the common carrier, such consignment may be deemed as unclaimed:

Provided that in case of perishable consignment, the period of thirty days shall not apply and the consignment shall be deemed unclaimed after a period of twenty-four hours of service of notice or any lesser period as may be mutually agreed to by and between the common carrier and the consignor.

(2) In the case of an unclaimed consignment under sub-section (1), the common carrier may,—

(a) if such consignment is perishable in nature, have the right to sell the consignment; or

(b) if such consignment is not perishable in nature, cause a notice to be served upon the consignee or upon the consignor if the consignee is not available, requiring him to remove the goods within a period of fifteen days

from the date of receipt of the notice and in case of failure to comply with the notice, the common carrier shall have the right to sell such consignment without any further notice to the consignee or the consignor, as the case may be.

(3) The common carrier shall, out of the sale proceeds received under sub-section (2), retain a sum equal to the freight, storage and other charges due including expenses incurred for the sale, and the surplus, if any, from such sale proceeds shall be returned to the consignee or the consignor, as the case may be.

16. No suit or other legal proceeding shall be instituted against a common carrier for any loss of, or damage to, the consignment, unless notice in writing of the loss or damage to the consignment has been served on the common carrier before the institution of the suit or other legal proceeding and within one hundred and eighty days from the date of booking of the consignment by the consignor.

Notice for institution of a suit.

17. Save as otherwise provided in this Act, a common carrier shall be responsible for the loss, destruction, damage or deterioration in transit or non-delivery of any consignment entrusted to him for carriage, arising from any cause except the following, namely:—

General responsibility of common carrier.

- (a) act of God;
- (b) act of war or public enemy;
- (c) riots and civil commotion;
- (d) arrest, restraint or seizure under legal process;
- (e) order or restriction or prohibition imposed by the Central Government or a State Government or by an officer or authority subordinate to the Central Government or a State Government authorised by it in this behalf;
- (f) fire, explosion or any unforeseen risk;

Provided that the common carrier shall not be relieved of its responsibility for the loss, destruction, damage, deterioration or non-delivery of the consignment if the common carrier could have avoided such loss, destruction, damage or deterioration or non-delivery had the common carrier exercised due diligence and care in the carriage of the consignment.

18. (1) Whoever contravenes the provisions of section 3, section 13 or a notification issued under section 14 shall be punishable for the first offence with fine which may extend to one thousand rupees, and for the second or subsequent offence with fine which may extend to five thousand rupees.

Punishment for contravention in relation to non-registration, carrying goods of dangerous or hazardous nature, or prohibited goods.

(2) If the person committing an offence under this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(3) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be proceeded against and punished accordingly.

Explanation.—For the purpose of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

Composition of offences.

19. (1) Any offence committed under section 18, may either before or after the institution of the prosecution, be compounded by such officers or authorities and for such amount as the State Government may, by notification in the Official Gazette, specify.

(2) Where an offence has been compounded under sub-section (1), the offender shall be discharged and no further proceedings shall be taken against him in respect of such offence.

Power to make rules.

20. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form and manner of making an application for grant or renewal of a certificate of registration and the fee which shall accompany such application under sub-section (2) or sub-section (3) of section 4;

(b) the other conditions which are required to be fulfilled by an applicant under clause (d) of sub-section (4) of section 4;

(c) the form in which and the conditions subject to which certificate of registration or renewal may be granted under sub-section (5) of section 4;

(d) the form and manner of maintaining a register under clause (a) of sub-section (7) of section 4;

(e) the information and return which may be furnished to the registering authority and the transport research wing under clause (c) of sub-section (7) of section 4;

(f) the form and manner in which a goods forwarding note shall be executed by the consignor under sub-section (1) of section 8;

(g) the form and manner in which a common carrier shall issue goods receipts under sub-section (1) of section 9;

(h) the procedure and safeguards to be complied with for carrying goods of dangerous or hazardous nature to human life under sub-section (1) of section 13;

(i) the specification of the goods of dangerous or hazardous nature to human life and the label or class of labels to be carried or displayed in or on the motor vehicle or on such goods in the course of their transportation under sub-section (2) of section 13;

(j) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this section and every notification issued under section 14 shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or the notification, or both Houses agree that the rule or the notification should not be made or issued, the rule or the notification shall thereafter have effect only in such modified form or

be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

21. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by general or special order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of two years from the date of commencement of this Act.

Power to remove difficulties.

(2) Every order made under sub-section (1) shall be laid, as soon as may be, after it is made, before each House of Parliament.

3 of 1865.

22. (1) The Carriers Act, 1865, is hereby repealed.

3 of 1865.

(2) Notwithstanding the repeal of the Carriers Act, 1865, anything done or any action taken under the said Act shall, in so far as such thing or action is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the provisions of this Act and shall continue in force accordingly until superseded by anything done or any action taken under this Act.

Repeal and saving.

10 of 1897.

(3) The mention of particular matters in this section shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeals.

STATEMENT OF OBJECTS AND REASONS

Movement of goods or property is an important and integral part of the economic development of the country. The role of various players in the entire chain of activities enabling movement of goods, therefore, assumes importance. At present, the law relating to the rights and liabilities of the common carrier is contained in the Carriers Act, 1865. The main objective of the Act was to make common carriers liable for the loss or damage to goods carried by them and also to limit the liability for such loss or damage to the goods/property delivered by them to be carried. Many changes have taken place since the enactment of the said Act. These include the following:—

(a) Various modes of transport now have separate enactments, for example, transport by the railways is being regulated by the Railways Act, 1989. It has, therefore, become necessary to re-define the scope and applicability of the Act to road transport industry.

(b) The transport industry also has undergone a sea change since 1865. A number of players and middlemen like brokers and agents have come into existence and play an increasing role in the movement of goods by road.

(c) The liability specified in the existing Act at one hundred rupees has also become grossly inadequate and irrelevant.

2. A number of deficiencies have been noticed in the course of the enforcement of the provisions of the Carriers Act, 1865. The Act has no provision for registration of Common Carriers. The Act also had not foreseen the sophistication and complexity of the transport trade, as it exists today. The Transporters' Associations have time and again demanded that the existing Act be repealed and new Act be enacted to cater to the present day requirements of transport, trade and commerce.

3. The Commission on Review of Administrative Laws constituted by the Central Government under the Chairmanship of Shri P.C. Jain in its Report submitted to the Government in September, 1998 has also recommended review of the Act.

4. Keeping in view the fact that other modes of transport are already covered under separate enactments and the need for redefining the common carrier, regulation of the common carriers by the State and provision of a transparent framework of rights and liabilities to govern the transactions between the common carriers and the customers has been felt, the Government set up a Committee under the Chairmanship of Shri M. Koteeswaran, the then Executive Director, Association of State Road Transport Undertakings (ASTRU) comprising members from Central Institute of Road Transport (CIRT), erstwhile Ministry of Surface Transport, representative of All India Motor Transport Congress (AIMTC). The Committee had recommended for repeal of the Carriers Act, 1865 and its re-enactment incorporating the above requirements.

5. The Bill, *inter alia*, seeks to achieve the following objectives:—

(i) To regulate and limit the liability of the common carriers.

(ii) To provide for a registration of common carriers.

(iii) To ensure proper statistical reporting in the transport sector by persons involved in transportation business.

(iv) To regulate carriage of hazardous and dangerous goods.

(v) To provide for rule making powers to deal with emerging and changing scenario from time to time.

(vi) To repeal the Carriers Act, 1865.

6. The Notes on clauses explain in detail the various provisions contained in the Bill.

7. The Bill seeks to achieve the above objects.

T.R. BAALU.

Notes on clauses

Clause 1.—This clause provides for the short title, extent and commencement of the proposed legislation. The proposed legislation will not be applicable to the State of Jammu and Kashmir. As certain preparatory steps are required to be taken before the proposed legislation is brought into force, it is proposed to empower the Central Government to bring it into force from a date to be notified by it.

Clause 2.—This clause seeks to define certain terms and expressions used in the Bill. These definitions include "common carrier", "consignment", "goods", "goods forwarding note" and "person". The State Transport Authorities and Regional Transport Authorities constituted under the Motor Vehicles Act, 1988 shall be the registering authorities for the purposes of the proposed legislation.

Clause 3.—This clause provides that after the commencement of the proposed legislation no person will engage, whether wholly or partly, in the business of common carrier without obtaining a registration under the proposed legislation.

Clause 4.—This clause seeks to set out the procedure for application for grant or renewal of registration by issuance of appropriate certificate for carrying on the business of common carrier. The explanation to sub-clause (3) seeks to clarify that one registration in one State for a common carrier would suffice. Sub-clause (6) provides that the period of validity of a registration or renewal of registration shall be ten years. Sub-clause (7) stipulates the conditions which a holder of registration shall have necessarily to comply with in terms of the requirements of the proposed legislation.

Clause 5.—This clause seeks to bestow on the registering authority of the State the power to suspend or revoke the certificate of registration under certain circumstances after giving the holder of the registration an opportunity of being heard.

Clause 6.—This clause seeks to provide the procedure for preferring an appeal by any person who is aggrieved by an order of the registering authority in respect of refusal to grant or renew a registration or suspension or revocation of a registration. The State Transport Appellate Tribunal constituted under sub-section (2) of section 87 of the Motor Vehicles Act, 1988 shall be the appellate authority for the purposes of the proposed legislation.

Clause 7.—This clause provides that the State Transport Authority in each State or Union territory shall be required to submit an annual return giving details of the goods carried by the common carriers on the basis of returns furnished by such carriers. This is a new provision for statistical purposes.

Clause 8.—This clause lays down the procedure to be followed by the consignor. It includes execution of goods forwarding note in the form to be laid down by rules, responsibility of the consignor for the correctness of the particulars and the declaration of the value of consignment as also indemnification of the common carrier against any damage suffered by him on grounds of incorrectness or incompleteness of the particulars mentioned in the goods forwarding note.

Clause 9.—This clause provides that a common carrier shall issue a goods receipt in the form specified by rules and that the goods receipt would be the *prima facie* evidence of the weight and other particulars of the goods.

Clause 10.—This clause corresponds to section 3 of the Carriers Act, 1865. It seeks to limit the liability of the common carrier for loss of, or damage to, consignment up to ten thousand rupees or value of consignment declared, whichever is less, unless the consignor has undertaken to pay higher risk rate fixed by the common carrier under the proposed section 11. This clause also defines the liability of the common carrier in case of delay in delivery up to a period agreed to in the goods forwarding note and beyond the period so agreed. It has been provided that up to the period agreed to, the liability would be limited to the freight on the consignment and beyond the agreed period, the liability shall be as

stipulated in this clause or clause 11, as the case may be. This clause further provides that the common carrier shall not be liable if such loss or damage or delay in delivery had not taken place due to his fault or neglect or on the part of his servants or agents.

Clause 11.—This clause corresponds to section 4 of the Carriers Act, 1865. It lays down the procedure to be followed by the common carrier for payment of higher risk rate for undertaking higher risk and liability as laid down in clause 10.

Clause 12.—This clause stipulates the conditions under which the common carrier would be liable to the consignor for the loss or damage on account of his criminal act. He would be liable to compensate the consignor and that the onus of proving the negligence or criminal act on the part of the common carrier would not be on the plaintiff. Sub-clause (3) provides that if any consignment has been detained for examination by the competent authority and prohibited goods have been detected, the common carrier shall not liable if he can prove that such description of goods in the forwarding note was received from the consignor. The explanation to this clause clarifies that any person or authority who is empowered to examine or scrutinise goods by or under any law for the time being in force to secure compliance of the provisions of that law would be a competent authority for the purpose of clause 12.

Clause 13.—This clause provides that it is the duty of a common carrier to ensure that dangerous and hazardous goods are insured before they are accepted for movement.

Clause 14.—This clause seeks to empower the Central Government to notify in the Official Gazette, in public interest, as to the goods or class of goods which are not to be carried by a common carrier.

Clause 15.—This clause seeks to empower the common carrier to dispose of unclaimed consignments (consignments which the consignee fails to take delivery after a period of thirty days from the date of notice given by the common carrier). In case of perishable consignments, the period would be twenty-four hours from service of notice or any lesser period as may be agreed upon. The common carrier will have the power to dispose of the consignments and after recovering a sum equal to the freight, storage and other charges due including expenses incurred for the sale, remit the surplus to the consignee.

Clause 16.—This clause provides a period of limitation for institution of suits against common carriers for the loss of or damage to any consignment. The complainant has to serve notice within 180 days from the date of booking of the consignments for institution of any suit or other legal proceedings.

Clause 17.—This clause seeks to list out the *force-majeure* conditions under which the common carrier would be exonerated from liabilities. These conditions include act of God, act of war or public enemy, fire, explosion, riots or civil commotion and orders of restriction or prohibition by Government.

Clause 18.—This clause relates to the punishments for contravention in relation to non-registration and carrying goods of dangerous or hazardous nature or prohibited goods. It is provided that whoever contravenes the provisions of section 3, section 13 or a notification issued under the proposed section 14 shall be punished with fine which may extend to one thousand rupees and in case of the second or any subsequent offence with fine which may extend to five thousand rupees.

Clause 19.—This clause seeks to empower such officers or authority of the State Government as may be specified by it by notification in the Official Gazette to compound the offences under clause 18 at any time before or after the institution of the prosecution. The amount of compounding shall be laid down by the State Government, by notification.

Clause 20.—This clause empowers the Central Government to make rules, by notification in the Official Gazette, for carrying out the provisions of the proposed legislation. Sub-clause (2) enumerates the matters in respect of which such rules may be made. These

matters, *inter alia*, include the procedure for application for grant or renewal of registration for carrying on the business of common carrier, the form of register to be maintained by the common carrier, the form in which returns are to be furnished by common carrier, the form in which a goods forwarding note is to be executed, the form in which goods receipt is to be issued, the procedure and safeguards to be complied with in carrying dangerous or hazardous nature of goods and the specifications required to be exhibited while carrying dangerous or hazardous nature of goods. Sub-clause (3) lays down that the rules are required to be laid before Parliament.

Clause 21.—This clause empowers the Central Government to issue orders for removing difficulties in giving effect to the provisions of the proposed legislation. Such orders can be issued only within two years from the date of commencement of the proposed legislation. Every order made under this clause is required to be laid before Parliament.

Clause 22.—This clause seeks to repeal the Carriers Act, 1865 and also to save anything done or action taken under the repealed Act in so far as they are not inconsistent with the provisions of the proposed legislation.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 20 of the Bill empowers the Central Government to make rules, by notification in the Official Gazette, for carrying out the provisions of the proposed legislation. Sub-clause (2) of the said clause enumerates the matters in respect of which such rules may be made under the proposed legislation. These matters, *inter alia*, relate to the form and manner of making an application for grant or renewal of a certificate of registration of persons to engage in the business of a common carrier and the fee which shall accompany such application under sub-section (2) or sub-section (3) of section 4, the other conditions which are required to be fulfilled by an applicant under clause (d) of sub-section (4) of section 4, the form in which and the conditions subject to which a certificate of registration or renewal may be granted under sub-section (5) of section 4, the form and manner of maintaining a register under clause (a) of sub-section (7) of section 4, the information and return which may be furnished to the registering authority and the transport research wing of the Ministry of the Central Government dealing with Road Transport and Highways under clause (c) of sub-section (7) of section 4, the form and manner in which a goods forwarding note shall be executed by the consignor under sub-section (1) of section 8, the form and manner in which a common carrier shall issue goods receipts under sub-section (1) of section 9, the procedure and safeguards to be complied with for carrying goods of dangerous or hazardous nature to human life under sub-section (1) of section 13 and the specification of the goods of dangerous or hazardous nature to human life and the label or class of labels to be carried or displayed in or on the motor vehicle or on such goods in the course of their transportation under sub-section (2) of section 13.

2. Sub-clause (3) of the said clause 20 of the Bill requires that the rules made by the Central Government under the proposed legislation shall have to be laid before Parliament.

3. The matters in respect of which rules may be made are matters of procedure or administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

YOGENDRA NARAIN,
Secretary-General.